

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 521
92ND GENERAL ASSEMBLY

Reported from the Committee on Judiciary, April 23, 2003, with recommendation that the House Committee Substitute for Senate Bill No. 521 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

1683L.04C

AN ACT

To amend chapter 34, RSMo, by adding thereto six new sections relating to contracts for public works.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 34, RSMo, is amended by adding thereto six new sections, to be known as sections 34.059, 34.203, 34.206, 34.209, 34.212, and 34.215, to read as follows:

34.059. 1. No public entity, nor any officer, agent, or employee acting or purporting to act on behalf of such public entity, shall require a bidder, proposer, or contractor to obtain or procure any surety bond, including but not limited to, bid bonds, payment bonds, and performance bonds, from a particular insurance or surety company, producer, agent, or broker in connection with any contract for the construction of public works.

2. Any provision in a public works contract, bidding documents, request for proposals, or similar document in conflict with this section shall be void as contrary to the public policy.

3. As used in this section, the terms "public entity" and "public works" shall be given the definitions as set forth in section 107.170, RSMo. Public entities as defined in subsection 3 shall require that any surety bond required by section 107.170, RSMo, be issued by a company that holds a certificate of authority from the United States Department of Treasury as an acceptable surety on federal bonds and is listed in the most recent revision of the United States Department of the Treasury Circular 570 or its successor as holding a surety license in Missouri.

34.203. The provisions of sections 34.203 to 34.215 shall be known and may be cited

2 as the "Open Contracting Act".

34.206. The purpose of the provisions of sections 34.203 to 34.215 are to prohibit
2 public agencies from imposing certain labor requirements as a condition of performing
3 public works.

34.209. The state and political subdivisions, agencies, and instrumentalities thereof,
2 when engaged in procuring products or services or letting contracts for manufacture of
3 public works, or overseeing such procurement, construction, or manufacture, shall ensure
4 that bid specification, project agreements, and other controlling documents, entered into,
5 required or subject to approval by the subdivision, agency, or instrumentality, do not:

6 (1) Require or prohibit bidders, offerors, contractors, or subcontractors to enter
7 into or adhere to agreements with one or more labor organizations on the same or related
8 projects;

9 (2) Discriminate against bidders, offerors, contractors, or subcontractors for
10 entering or refusing to enter into or adhere to agreements with one or more labor
11 organizations on the same or related construction projects described in this section; or

12 (3) Require or prohibit any bidder, offeror, contractor, or subcontractor to enter
13 into, adhere to, or enforce any agreement that requires its employees as a condition of
14 employment to become members of or become affiliated with a labor organization.

15 (4) Nothing in sections 34.203 to 34.215 shall prohibit employers or other parties
16 covered by the National Labor Relations Act from entering into agreements or engaging
17 in any other activity arguably protected by law, nor shall any aspect of sections 34.203 to
18 34.215 be interpreted in such a way as to interfere with the labor relations of parties
19 covered by the National Labor Relations Act.

34.212. 1. The state and political subdivisions and any agencies or instrumentalities
2 thereof shall not issue grants or enter into cooperative agreements for construction projects
3 a condition of which requires that bid specifications, project agreements, or other
4 controlling documents pertaining to the grant or cooperative agreement contain any of the
5 elements specified in section 34.209.

6 2. The state and political subdivisions or any agencies or instrumentalities thereof
7 shall exercise such authority as may be required to preclude a grant recipient or party to
8 a cooperative agreement from imposing any of the elements specified in section 34.209 in
9 connection with any grant or cooperative agreement awarded or entered into. Nothing in
10 sections 34.203 to 34.215 shall prohibit contractors or subcontractors from voluntarily
11 entering into agreements described in section 34.209.

34.215. Any interested party, which shall include a bidder, offeror, contractor,
2 subcontractor, or taxpayer, shall have standing to challenge any bid award, specification,

3 **project agreement, controlling document, grant, or cooperative agreement which violated**
4 **the provisions of sections 34.203 to 34.215, and shall be awarded costs and attorney's fees**
5 **in the event that the challenge prevails.**